

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KENNEDY SMITH, #362092

*

Plaintiff,

v.

*

CIVIL ACTION NO. ELH-14-1475

CRAIG TAWES (AGENT OF P & P)

*

Defendant.

MEMORANDUM

On May 1, 2014, the court received for filing the above-captioned civil rights action submitted by Maryland Division of Correction inmate Kennedy Smith, pursuant to 42 U.S.C. § 1983.

Smith complains that defendant, an agent for the Department of Parole and Probation in Princess Anne, Maryland, slandered him by labeling him as a “sex offender” on two 2014 parole warrants. He states that he was never convicted of sex offenses. ECF No. 1. Smith seeks compensatory damages of \$150,000.00 for alleged “defamation of character” and asks that “Parole and Probation stop labeling me as a sex offender.” *Id.* Because he appears indigent, Smith shall be granted leave to proceed in forma pauperis. *See* ECF No. 2. His complaint shall, however, be summarily dismissed.

Insofar as Smith has raised an allegation of slander, he has failed to state a claim under § 1983. The decision of the Supreme Court in *Paul v. Davis*, 424 U.S. 693 (1976) is dispositive here. In that case, the Supreme Court discussed at some length the limits of a protected liberty interest and held that a plaintiff may not rely on defamatory statements as the basis for a due process claim asserted under § 1983. Harm or injury to a plaintiff’s interest to his reputation does not result in the deprivation by a state of a plaintiff’s due process “liberty” or “property” interests. *Id.* at 712.

In this case, it is apparent that Smith is seeking damages and other relief primarily because his reputation was allegedly damaged by public disclosures. Under *Paul*, a claim of this sort is not

maintainable under § 1983. *See also Siegert v. Gilley*, 500 U.S. 226, 233 (1991). An action for damages to reputation "lies...in the tort of defamation, not in 42 U.S.C. § 1983." *Fleming v. Dep't of Public Safety*, 837 F.2d 401, 409 (9th Cir. 1988).

Because Smith's prisoner civil rights case fails to state a claim and is premised on an "indisputably meritless legal theory," his case shall be dismissed pursuant to 28 U.S.C. § 1915(e).¹ He is hereby notified that he may be barred from filing future suits in forma pauperis if he continues to file federal civil rights actions that are subject to dismissal under § 1915(e) or Rule 12(b)(6).² This constitutes the first § 1915(e) strike to be assessed against Smith. A separate Order follows.

Date: May 7, 2014.

/s/
Ellen Lipton Hollander
United States District Judge

¹ 28 U.S.C. § 1915(e)(2) states:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

- (A) the allegation of poverty is untrue; or
- (B) the action or appeal--
 - (i) is frivolous or malicious;
 - (ii) fails to state a claim on which relief may be granted; or
 - (iii) seeks monetary relief against a defendant who is immune from such relief.

² 28 U.S.C. § 1915(g) states as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Once three such dismissals under § 1915(e) or Rule 12(b)(6) of the Federal Rules of Civil Procedure have been accumulated, a prisoner will be barred from initiating further civil actions in forma pauperis, absent extraordinary circumstances.